

## Cleveland Objection Issues Summary - Powerlines

### Objectors:

**Latham and Watkins, LLP acting on behalf of San Diego Gas and Electric Company (SDG&E)**

### Summary:

SDG&E asserts that adopting the Cleveland National Forest (CNF) Draft ROD without excluding the existing TL 626 and C79 power lines from recommended wilderness designation would be arbitrary and capricious and violate the National Forest Management Act, National Environmental Policy Act and the Administrative Procedure Act. SDG&E's pending Master Special Use Permit application proposes reauthorization and fire hardening of TL 626 in place as well as relocation and decommissioning of C79. SDG&E claims that the CNF Draft ROD's recommended wilderness designations would prohibit ongoing operations and maintenance activities on the subject power lines and improperly prejudice the outcome of a decision on their Master Special Use Permit application.

### Review Team Analysis:

SDG&E's objection points are primarily based upon the status of their existing electric transmission (TL 626) and distribution (C79) infrastructure within the proposed Recommended Wilderness (RW) designation as described in the CNF Draft ROD. The Special Use Permits authorizing TL 626 and C79 have exceeded their stated expiration dates of February 1, 2014 and November 8, 1992 respectively. The permits did not grant SDG&E perpetual use and occupancy of National Forest System (NFS) lands. Special Use Permits are a license to use public lands, and no land use rights were conveyed to SDG&E via the permits. Currently, the permits remain in effect on an ongoing and short-term basis pending a Forest Service decision upon SDG&E's Master Special Use Permit Application (EIS) and a range of alternatives to SDG&E's proposed action. *If the decision for the Master Special Use Permit project, after considering a range of alternatives, retains the current alignment of the power lines given the RW designation, then a Land Management Plan amendment would be required.*

The CNF LMP (CNF LMP, Part 2, pg. 3) states that suitable uses for each land use zone designation, such as Recommended Wilderness (RW), are intended as guidance for future activities and do not affect existing authorized occupancy and uses. The FSEIS (FSEIS, pg.16) states that projects currently under contract, permit, or other authorizing instrument will not be affected by the decision to alter land use zone designations.

The Draft ROD (Draft ROD, Cleveland NF, pp. 1, 5) repeatedly states that the decision will not amend any existing permits; the scope of currently authorized activities remains defined by the terms and conditions of the current permits, not by the plan amendment. Designation of the RW land use zone across the alignment of SDG&E's TL 626 and C79 power lines would not preclude ongoing operations and maintenance of the power lines as currently authorized nor would it preclude decommissioning of the C79 power line by mechanized or motorized

equipment consistent with the terms and conditions of the Special Use Permit and as approved by the authorized officer.

Appendix A of the Draft ROD and Appendix 2 of the FSEIS thoroughly describe the existing conditions within the proposed RW land use allocations; however, the decision rationale in the Draft ROD lacks sufficient detail to support a RW designation in the aspect of non-conforming uses and characteristics. Non-conforming characteristics of the Cedar Creek undeveloped area as listed in Appendix 2 include: power lines, access roads, invasive species, low flying aircraft, OHV use, etc.

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#### REMEDY(S) PROPOSED BY OBJECTORS

Exclude the TL 626 and C79 power lines from recommended wilderness designation.

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#### INSTRUCTIONS BEING CONSIDERED

- Clarification in the final ROD for the CNF (pg. 5). The subject language currently reads, “my decision could affect the future of the *expired* San Diego Gas & Electric (SDG&E) power line permits in the Sill Hill IRA and the Cedar Creek undeveloped area.” The language could be modified slightly to better clarify, “this decision could affect *future decisions concerning the issuance* of San Diego Gas & Electric (SDG&E) power line permits in the Sill Hill IRA and the Cedar Creek undeveloped area. *The status of the existing lines would not change, but a decision for continuation or expansion of the use would not be suitable within the RW allocation.*”
- In the final ROD more thoroughly address the non-conforming wilderness characteristics, such as power lines, present in the Cedar Creek undeveloped area and Sill Hill IRA along with the rationale for why they do not preclude a decision for RW designation of the areas. For example, it could be explained that the existing SDG&E power line Special Use Authorizations do not grant perpetual use and occupancy, have exceeded their stated expiration dates and continue to be authorized on an ongoing, short-term basis pending a decision on SDG&E’s Master Special Use Permit Application.